

### **REMARKS**

Applicants appreciate the Examiner's thorough examination of the subject application and request reconsideration of the subject application based on the foregoing amendments and the following remarks.

Claims 60-63, 80-90 and 101-104 are pending in the subject application.

Claim 88 is acknowledged as being allowable by the Examiner.

Claims 1-59, 64-79 and 91-100 were previously canceled.

Claims 60-63, 80-87, 89, 90 and 101-104 stand rejected under 35 U.S.C. §102.

Without agreeing with the rejection of claims 60-63 and 101-104, Applicants have canceled these claims without prejudice or disclaimer to pursuing such claims in a subsequently allowed continuing application.

Claims 80 and 87 are amended so the respective method includes forming a through aperture in each of the adjacent bone segments. In view of this amendment to claim 80, claims 83 and 84 are canceled.

Claims 82, 85, 86 and 89 are amended to be consistent with the amended language of the base claim, claim 80.

Claims 105-110 are added in the foregoing amendment. Each of claims 105-109 depending from claim 88, which claims is indicated as being allowable in the above-referenced Office Action. Applicants would note that each of claims 105-109 do not require further search or consideration because each are considered to be allowable at least because each claim depends from an allowable base claim (claim 88). Applicants also note that claims 105-109 correspond respectively to pending claims 81, 85, 86 and 90. As to claim 110, Applicants believe that further search or consideration of this claim is not because it is considered to be allowable at least because it depends from a base claim (claim 80) that is believed to be allowable.

In addition, Applicants note that the addition of claims 105-110 does not increase the total number of claims as 10 claims are being canceled and 6 claims (claims 105-110) are being added in the foregoing amendment.

The amendments to the claims are supported by the originally filed disclosure and thus entry of the amendments is respectfully requested.

### 35 U.S.C. §102 REJECTIONS

The Examiner rejected claims 60-63, 80-87, 89, 90 and 101-104 under 35 U.S.C. §102(b) as being anticipated by Jumashev et al. [USP 4,059,115; “Jumashev”] or as being anticipated by Ulrich [USP 4,135,506]. Applicants respectfully traverse as discussed below.

Because claims 60-63, 83, 84 and 101-104 are canceled in the foregoing amendment, Applicants do not believe that the within rejection as to these claims need be addressed further herein. Because claims were amended in the instant amendment, the following discussion refers to the language of the amended claims.

The above referenced Office Action in regards to claim 88, provides on page 4 thereof that neither reference shows both apertures as through apertures. Thus, Applicants have amended each of claims 80 and 87 so as to provide that the method claimed in all pending claims includes forming a through aperture in each of the adjacent bone segments. Thus and without agreeing with the rejection, Applicants believe that claims are allowable at least for this reason.

As the Federal Circuit has indicated, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Or stated another way, “The identical invention must be shown in as complete detail as is contained in the ... claims. *Richardson v Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ 2d. 1913, 1920 (Fed. Cir. 1989). Although identity of terminology is not required, the elements must be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990). Applicants respectfully submit that it is clear from the above remarks that the above identified claims are not anticipated by either Jumashev or Ulrich.

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It is respectfully submitted that claims 80-82, 85-87, 89 and 90 are patentable over either of the cited references and thus satisfy the requirements of 35 U.S.C. §102(b), for the foregoing reasons. Therefore, these claims are allowable.

It is respectfully submitted that the subject application is in a condition for allowance. Early and favorable action is requested.

Applicants believe that additional fees are not required for consideration of the within Response. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 49386 CON (305538).

Respectfully submitted,  
Edwards Angell Palmer & Dodge, LLP

/ William J. Daley, Jr. /

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